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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAWRENCE WILCOCK

Appeal 2009-010958
Application 09/977,500
Technology Center 2400

Before HOWARD B. BLANKENSHIP, JOHN A. JEFFERY, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-22, 25, and 26, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellant's invention relates to establishing communication over a data network between endpoint systems. A communication request from an initiating party may be processed by identifying an appropriate communication session and identifying a suitable further participant. Abstract.

Representative Claim

> 1. A method of establishing communication over a data network between endpoint systems using a service system that can set up a communication session with an associated transport mechanism enabling the exchange of data between endpoint system joined to the session by the service system, the method comprising:
>
> processing a communication request received at the service system on the basis of information associated with the request, said processing including:
>
> (a) selecting by the service system, from a pool of current communication sessions, an appropriate session for the communication requested based on comparing session information of one or more of the current communication sessions with information associated with the communication request and, where no appropriate session currently exists, creating a new appropriate session; and
>
> (b) selecting by the service system, from a pool of available parties, a specific party and associated endpoint system to join the session selected or created in step (a).

Examiner's Rejections

Claims 1-5, 7-20, 22, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter (US 6,434,599 B1) and Grimm (US 5,828,843).

Claims 6 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter, Grimm, and Cave (US 5,958,014).

ANALYSIS

The Examiner rejects instant claim 1 under 35 U.S.C. § 103(a) over the combination of Porter and Grimm. Our discussion of the references will be limited to the teachings of Porter, since Appellant's arguments in support of patentability in the Appeal Brief contend that the Examiner erred in findings with respect to Porter. In particular, Appellant argues that Porter fails to teach the claimed step (b) -- "selecting by the service system, from a pool of available parties, a specific party and associated endpoint system to join the session selected or created in step (a)." Appellant further argues that Porter fails to teach the claimed order of selecting or creating a session followed by selecting the specific party.

Porter teaches that a visiting user can initiate the dynamic formation of a chat session by expressing the desire to chat with other visiting users. Col. 4, ll. 51-53. The initiating user describes the visiting users of interest to him or her, as well as how he or she wants to be presented to other visiting users. *Id.* at ll. 53-55; Fig. 6A.

> Upon receipt of an "initiate" request, at 916 [Fig. 9B], chat session manager 412 [Fig. 4] polls all other current visitors, presenting them with the descriptions describing the initiating user as well as his/her interest. In one embodiment,

> chat session manager 412 polls current visitors who are already participating in an earlier formed chat session by posting the question through the chat session. At 918, upon expiration of a predetermined reply interval, chat session manager 412 determines if at least one current visitor has consented to chat with the initiating user. If none has consented, chat session manager 412 informs the initiating user accordingly, 920. If at least one consent is a current chat participant, chat session manager 412 adds the initiating user to an appropriate one of the earlier formed chat sessions, 924.
>
> . . . .
>
> If at least one other visiting user consented, but none are current chat participants, chat session manager 412 allocates the appropriate resources (memory space, etc.) and dynamically forms a chat session for the initiating and consenting users, 926. Chat session manager 408 keeps tracks of all the chat sessions and their participants.

Porter col. 8, ll. 23-50.

Porter's Figure 9B is reproduced below.

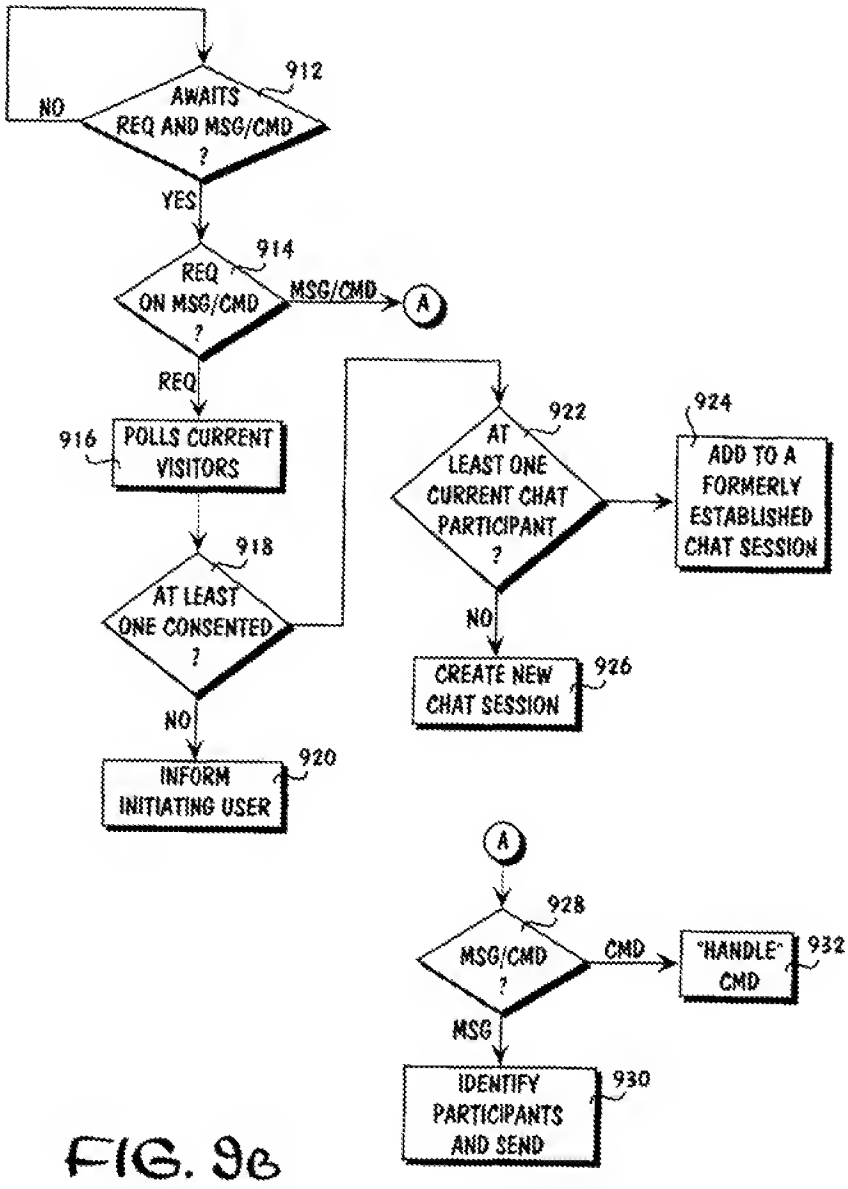

FIG. 9B

Figure 9B is a flowchart that illustrates the steps described at column 8, lines 23 through 50.

The Examiner finds that Porter teaches the requirements of claim 1, step (b), because an interested visiting user -- the "specific party" -- consenting to participate in a chat session is added (selected) to either an appropriate earlier formed chat session or a newly established one. The Examiner further finds that a session is selected or created by the system prior to users being selected to participate in the session.[1]

Appellant responds in the Reply Brief that the Examiner's reading of "selecting" is inconsistent as that concept is used in Appellant's Specification and claims. Appellant contends that "selecting" a specific party must involve an act of control by the system, whereas the Porter system merely facilitates sessions between users who indicate a desire to chat together.

However, Appellant does not point to anything in the disclosure or the instant claims that would require that the "selecting" be something more than that of Porter's system, which selects the specific (consenting) party to join a particular chat session. Our reviewing court has identified two instances where claim scope may be limited by the disclosure. The Specification may reveal a special definition given to a claim term that differs from the meaning it would otherwise possess. Further, the Specification might reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. *Phillips v. AWH Corp.,* 415 F.3d 1303, 1316 (Fed.

[1] That a consenting user is "to join" the session selected, in accordance with step (b), suggests an implicit interpretation of the reference that entry of the initiating user creates a different chat session that is "joined" by the consenting user. The initiating user may be added to a formerly established chat session (Fig. 9B, step 924), which can be considered a chat session that is joined by a consenting user, because the parties in the chat are different from those comprising the formerly established session.

Cir. 2005) (en banc). Neither exception applies here. We thus default to the general rule that the words of a claim are given their ordinary and customary meaning as understood by a person of ordinary skill in the art at the time of invention. *See id.* at 1312.

Moreover, even in the briefs, Appellant does not allege any specific definition for the term "selecting" that would distinguish over the "selecting" that is taught by Porter. Instant claim 1 does not preclude a user's input to facilitate the "selecting" of a specific party.

Appellant adds a new argument in the Reply Brief that could have been presented in the Appeal Brief. Appellant alleges that the combination of Porter and Grimm is improper. The argument is untimely because the same combination of Porter and Grimm was set forth in the rejection (mailed Dec. 29, 2006) to which Appellant filed the Appeal Brief in response. As such, we have not considered the new argument. *See Ex parte Borden*, 93 USPQ2d 1473 (BPAI 2010) (informative).[2]

We therefore are not persuaded that the Examiner erred in rejecting claim 1. We sustain the § 103(a) rejection. Claims 2-22, 25, and 26, not separately argued, fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

DECISION

The rejection of claims 1-5, 7-20, 22, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Porter and Grimm is affirmed.

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[2] In any event, the new argument is not persuasive because it is based on general background statements in Porter, rather than the actual invention described by the reference. For example, people in "real-world" conversations as discussed in the background of Porter do not, in general, fill out forms (Porter Fig. 6A) prior to chatting.

The rejection of claims 6 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Porter, Grimm, and Cave is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

pgc